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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 CHERYL M. MAZANTI and KYLE
9 MAZANTI, husband and wife,

10 Plaintiffs,

11 v.

12 NATIONWIDE INSURANCE
13 COMPANY, a foreign corporation doing
14 business in the State of Washington, and
15 NATIONWIDE AGRIBUSINESS
16 INSURANCE COMPANY, a foreign
17 corporation doing business in the State of
18 Washington,

19 Defendants.

CASE NO. C19-5127 BHS

ORDER GRANTING
DEFENDANT'S MOTION TO
STRIKE PLAINTIFFS' JURY
DEMAND

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21 This matter comes before the Court on Defendant Nationwide Agribusiness
22 Insurance Company's ("Nationwide") motion to strike Plaintiffs Mrs. Cheryl Mazanti
and Mr. Kyle Mazanti's ("the Mazantis") jury demand. Dkt. 12.¹ The Court has

¹ Nationwide informs the Court that "'Nationwide Insurance Company,' the other entity plaintiffs sued, is not a legal entity and did not issue the insurance policy that is the subject of this suit." Dkt. 12 at 1 n.1.

1 considered the pleadings filed in support of and in opposition to the motion and the
2 remainder of the file and hereby grants the motion for the reasons stated herein.

3 **I. PROCEDURAL HISTORY**

4 On January 18, 2019, the Mazantis filed a complaint for damages against
5 Nationwide in the Mason County Superior Court for the State of Washington. Dkt. 1-1.
6 Relevant to the instant motion, the Mazantis did not request a jury trial. *Id.* On February
7 15, 2019, Nationwide removed the matter to this Court. Dkt. 1. On February 26, 2019,
8 Nationwide answered the complaint and added a counterclaim for declaratory relief. Dkt.
9 9. On February 26, 2019, the Mazantis answered. Dkt. 26. On March 19, 2019, the
10 Mazantis filed a demand for jury trial. Dkt. 11.

11 On March 25, 2019, Nationwide filed the instant motion to strike the Mazantis'
12 jury demand. Dkt. 12. On March 26, 2019, the Mazantis responded. Dkt. 13. On April 12,
13 2019, Nationwide replied. Dkt. 14.

14 **II. DISCUSSION**

15 Since the Mazantis did not request a jury trial before this case was removed from
16 state court, Fed. R. Civ. P. 38(b), made applicable to removed cases by Fed. R. Civ. P.
17 81(c), required the Mazantis to demand a jury trial within fourteen days from filing the
18 last pleading concerned with the issues for which trial by jury is sought. The parties agree
19 that the Mazantis' answer was the last relevant pleading. Dkt. 12 at 3; Dkt. 13 at 2. The
20 Mazantis concede that their jury demand was due March 12, 2019 but was not filed until
21 March 19, 2019. Dkt. 13 at 2. Failure to file within the time provided constitutes a waiver
22 of the right to trial by jury. Fed. R. Civ. P. 38(d). Despite the waiver, "the court may, on

1 motion, order a jury trial on any issue for which a jury trial might have been demanded.”
2 Fed. R. Civ. P. 39(b).

3 In this case, the Mazantis’ counsel declares that the reason for the late filing was
4 that he inadvertently entered the due date for the jury demand on the incorrect date in his
5 calendar. Dkt. 13-1 at 2. The Mazantis argue that Nationwide cannot show prejudice and
6 ask that the Court to follow *Johnson v. Dalton*, 57 F. Supp.2d 958 (C.D. Cal. 1999) and
7 exercise discretion to override the waiver provisions of Fed. R. Civ. P. 38. Dkt. 13 at 3.
8 The court in *Johnson* concluded that “[d]espite suggestions in Ninth Circuit opinions that
9 the Court does not have discretion in this case, the Court finds that the Rule itself, case
10 law, and policy support the court’s exercise of discretion here.” *Id.*

11 Since *Johnson*, the Ninth Circuit has continued to clearly hold that inadvertence is
12 not a permissible reason for a district court to grant relief from the failure to make a
13 timely jury demand. According to the Ninth Circuit, the court’s discretion “does not
14 permit a court to grant relief when the failure to make a timely demand results from an
15 oversight or inadvertence.” *Zivkovic v. Southern California Edison Co.*, 302 F.3d 1080,
16 1086–87 (9th Cir. 2002). “An untimely request for a jury trial must be denied unless
17 some cause beyond mere inadvertence is shown.” *Pacific Fisheries Corp. v. HIH Cas. &*
18 *General Ins., Ltd.*, 239 F.3d 1000, 1003 (9th Cir. 2001). The Mazantis’ counsel explicitly
19 declares that the only reason for his untimely request was inadvertence. Dkt. 13-1 at 2.
20 The Court finds that on the facts of this case, *Zivkovic* and *Pacific Fisheries* are
21 controlling. The Court concludes that the Mazantis have failed to timely demand a jury
22 and have waived their right to a trial by jury.

1 **III. ORDER**

2 Therefore, it is hereby **ORDERED** that Nationwide's motion to strike the
3 Mazantis' jury demand, Dkt. 12, is **GRANTED**.

4 Dated this 28th day of May, 2019.

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7 BENJAMIN H. SETTLE
8 United States District Judge
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